

# MEMORANDUM

Agenda Item No. 7(B)

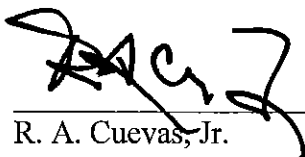
**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** (Second Reading 10-20-15)  
July 14, 2015

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance related to emergency management and employment; creating section 8B-11.1 of the Code; making it unlawful for employers to retaliate against non-essential employees complying with County evacuation and emergency orders including non-essential employees working in evacuation areas that depend on public transportation; providing exemptions for employees in government, government contractors providing essential emergency services, public safety agencies, health care, public utilities and media; establishing criminal penalty; amending section 8CC of the Code establishing civil penalty

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/cp

# Memorandum



**Date:** October 20, 2015

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

**Subject:** Ordinance Relating to Essential Employees Working in Evacuation

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The proposed ordinance relating to emergency management and employment creates Section 8B-11.1 of the Code of Miami-Dade County making it unlawful to retaliate against non-essential employees complying with County evacuation and emergency orders including non-essential employees working in evacuation areas that depend on public transportation. Also, this ordinance establishes criminal penalty and amends Section 8CC of the Code establishing civil penalty.

Should any occurrence that is outlined in this Section of the Code occur, it is assumed that the Department of Regulatory and Economic Resources (RER) would investigate the matter with its existing resources and, if necessary, issue the appropriate civil citation of \$500. While there is currently a lack of data that is needed to determine whether or not this legislation would cause a fiscal impact, the fine that may be generated would go towards mitigating the cost of enforcement. Therefore, should a violation be issued, it may result in a positive fiscal impact.

A handwritten signature in black ink, appearing to read "Jack Osterholt", written over a horizontal line.

**Jack Osterholt**  
Deputy Mayor

fis08915




# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 20, 2015

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 7(B)

Please note any items checked.

- ☒ "3-Day Rule" for committees applicable if raised
- ☒ 6 weeks required between first reading and public hearing
- ☒ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(B)

10-20-15

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATED TO EMERGENCY MANAGEMENT AND EMPLOYMENT; CREATING SECTION 8B-11.1 OF THE CODE OF MIAMI DADE COUNTY, FLORIDA; MAKING IT UNLAWFUL FOR EMPLOYERS TO RETALIATE AGAINST NON-ESSENTIAL EMPLOYEES COMPLYING WITH COUNTY EVACUATION AND EMERGENCY ORDERS INCLUDING NON-ESSENTIAL EMPLOYEES WORKING IN EVACUATION AREAS THAT DEPEND ON PUBLIC TRANSPORTATION; PROVIDING EXEMPTIONS FOR EMPLOYEES IN GOVERNMENT, GOVERNMENT CONTRACTORS PROVIDING ESSENTIAL EMERGENCY SERVICES, PUBLIC SAFETY AGENCIES, HEALTH CARE, PUBLIC UTILITIES AND MEDIA; ESTABLISHING CRIMINAL PENALTY; AMENDING SECTION 8CC OF THE CODE OF MIAMI-DADE COUNTY ESTABLISHING CIVIL PENALTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 8B-11.1 is hereby created to read as follows:

>>Sec. 8B-11.1.      **Unlawful Retaliation Against Employees  
During Emergencies or Disasters.**

- (1) Upon a declaration of a state of emergency applicable to any portion of Miami-Dade County, it shall be unlawful for any employer to retaliate or threaten to retaliate against a non-essential employee who complies with County evacuation orders or other County Executive Orders issued during a declared state of local emergency.
- (2) In order to assure that employees that rely on mass transit services are evacuated from vulnerable areas, for purposes of this section, any non-essential employee that depends on mass transit services to commute to work to an area that is subject to a County evacuation order shall comply with County evacuation orders prior to the suspension of transit services and employers shall be prohibited from retaliating or threatening to retaliate against such employees for complying with County evacuation orders.

- (3) For purposes of this section, unlawful retaliation shall be defined as termination, demotion, or withholding or nonpayment of wages, salary, bonuses or benefits.
- (4) For the purposes of this section, any employee that is critical to the essential functioning of the following employers shall be deemed essential: (a) hospital or health care provider, (b) public or private utility, (c) media, (d) government agency, and (e) government contractor, public safety agency, or other business that is providing essential emergency related public safety supplies or services.
- (5) This section shall not apply to any employer who has promulgated a written policy that: a) defines essential and non-essential employees and b) requires that only essential personnel report to the place of employment during a declared state of local emergency. No policy shall be considered as promulgated unless conveyed to all employees in writing at least thirty (30) days prior to the declaration of local emergency and enforced by the employer.
- (6) In addition to any remedies elsewhere provided in the County Code or under law, any person convicted of violating any provision of this Section 8B-11.1 may be punished by a fine not to exceed five hundred (\$500) per employee, or by imprisonment for not more than one hundred and eighty (180) days, or both.
- (7) Applicability and enforcement. This section shall apply to both the incorporated and unincorporated areas, and in the unincorporated areas shall be enforced by the County and in the incorporated areas shall be enforced concurrently by the municipalities and the County.<<

**Section 2.** Chapter 8CC of the Code of Miami-Dade County is hereby amended as follows:<sup>1</sup>

Chapter 8CC CODE ENFORCEMENT

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Sec. 8CC-10. Schedule of civil penalties.

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<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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Code Section Description of Violation Civil Penalty

>>8B-11.1 Unlawful Retaliation for Compliance With County  
Emergency Management Evacuation and Executive Orders: \$500<<

**Section 3.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 4.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 5.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

Prepared by:

Eric Rodriguez  
David M. Murray

Prime Sponsor: Commissioner Sally A. Heyman

